

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by writing to: Internal Revenue Service, Taxpayer Advocates Office,

. Or telephone contact . Taxpayer

Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

August 31, 2007

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear ,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha Ramirez
Director Exempt Organizations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31 st , 20XX and 20XX.

LEGEND

ORG = Organization name XX = Date Address = address Revenue Agent
= Revenue Agent

Issue:

- (1) Can an organization that is classified as a 501(c)(3) organization continue to be so classified if they have not substantiated their exempt status by providing support for their revenues, expenses and activities?

Facts:

After numerous efforts to contact ORG, including sending certified letters, the organization has not responded to any requests for information and substantiation of the Form 990 filed for the years ending December 31st, 20XX and December 31st, 20XX.

Law:

IRC Section 501(c)(3) organizations are corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Tax Regulation 1.501(c)(3)-1(a) *Organizational and operational tests* (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

IRC 6033(a)(1) states that except for a few listed exceptions, every organization exempt from taxation under IRC Section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Tax Regulation §1.6033-2(a)(1) states in part that every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross

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income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization. Tax Regulation §1.6033-2(a)(2)(i) states in pertinent part that every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section (including, for taxable years ending before December 31, 1972, private foundations, as defined in section 509(a)), shall file its annual return on Form 990.

Tax Regulation §1.6033-2(i)(1) states that an organization which is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

Tax Regulation §1.6033-2(i) (2) states that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of the Internal Revenue Code.

Tax Regulation §1.6033-2(i)(3) states that an organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information.

Internal Revenue Code Section 6001 states that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Tax Regulation 1.6001-1(a) provides that any person subject to income tax, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of tax or information. Section 1.6001-1(e) of the regulations provides that the books and records shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

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Tax Regulation 1.6001-1(d) provides that books and records required by IRC section 6001 be kept in a safe and convenient place and at all time be available for inspection by authorized internal revenue officers employees. "The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under Subtitle A of the Code."

Tax Regulation 301.7701-6(a) states that the term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group.

The Tax Court stated that the regulations under IRC Section 501(c)(3) provides for two tests, an operational test and an organizational test. Failure to meet either test negates the exempt status of the organization. TC Memo 1993-116 WL 87864 (U.S. Tax Court).

In Revenue Ruling 59-95, 1959-1 CB 627, (Jan. 01, 1959) an organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Internal Revenue Code of 1954 provides that every organization, except as provided therein, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe. Held, failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

Exempt status is a privilege, a matter of grace rather than a right (Christian Echoes National Ministry 470 F 2d 849, 857 (1972)). When the creators control the affairs of the organization there is an obvious opportunity for abuse which necessitates an open and candid disclosure of all facts bearing upon the organization, operations and finances. Where such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the taxpayers fail to meet the requirements of IRC Section 501(c)(3) (Bubbling Well Church of Universal Love v Commissioner, 74 TC 531, 535 (1980). Afd 670 F 2d 104 (9th cir, 1981)).

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In the 20XX Instructions For Form 990 And Form 990-EZ, return of organization exempt from income tax and short form return of organization exempt from income tax, p.14, states, "Recordkeeping. The organization's records should be kept for as long as they may be needed for the administration of any provision of the Internal Revenue Code. Usually, records that support an item of income, deduction, or credit must be kept for 3 years from the date the return is due or filed, whichever is later. Keep records that verify the organization's basis in property for as long as they are needed to figure the basis of the original or replacement property."

Government Position:

The ORG refused to support its assertion that it is an exempt organization by refusing to make its records and activities available for examination as required by law. For that reason, nothing could be found to support the organization's assertion that it is a charity as described under IRC Section 501(c)(3).

Conclusion:

The ORG is not an exempt organization as described under IRC Section 501(c)(3) of the Internal Revenue Code, and should be revoked effective January 1st, 20XX. For that reason, for federal tax purposes the organization is best described as a for-profit organization subject to the same tax laws and regulations as any incorporated organization. The organization is required to file the same tax returns that a for-profit organization would need to file (Form 1120 for the organization; W-2s, 1099s, Form 941 and Form 940 when applicable).

Because the exempt status of the ORG was revoked, they will need to file corporate tax returns for the year ended December 31st, 20XX and all subsequent years. Form 940 will also need to be filed for the year ended December 31st, 20XX and all subsequent years. These returns can be filed with Revenue Agent.

Because ORG was classified under IRC Section 501(c)(3) they retain appeal rights even if they initially agree with the revocation and then change their mind later on.